HD TANDEM
David Erickson, President
4300 Pacific Coast Highway
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April 8, 2019

VIA ECFS **Notice of Ex Parte**

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage, WC Docket No. 18-155

Dear Secretary Dortch:

On Thursday, April 4, 2019, the undersigned and Megan Delany of Dentons, met separately with Nirali Patel, Wireline Advisor to Chairman Pai, and William Holloway, Intern to Chairman Pai; Randy Clark, Acting Legal Advisor for Wireline and Public Safety to Commissioner Starks; Travis Litman, Chief of Staff and Senior Legal Advisor for Wireline and Public Safety to Commissioner Rosenworcel; and Arielle Roth, Wireline Legal Advisor to Commissioner O'Rielly. In addition, we also met with Irina Asoskov, Susan Bahr, Allison Baker, Lynne Engledow, John Hunter, Al Lewis, Erik Raven-Hansen, and Gil Strobel of the Wireline Competition Bureau, and Octavian Carare, Richard Kwiatkowski, Eric Ralph, Emily Talaga, and Shane Taylor of the Office of Economics and Analytics, regarding the above referenced proceeding.

During the meetings, we discussed the success HD Tandem has had negotiating and implementing commercial agreements with both terminating and originating carriers. In response to some commenters' claims in the record regarding agreements that only "provide a nominal discount that allows the IXC to avoid the tariffed rates for transport, but that still contains a significant price premium and … inflated profits,"[1] HD Tandem expressed its view that such blanket statements without supporting data effectively handcuffs the Commission from being able to reach its desired end state of a uniform national bill-and-keep framework and the de-tariffed industry that many commenters are asking for.[2]

[1] Notice of Ex Parte of AT&T Services Inc., CC Docket No. 01-92; WC Docket No. 07-135; WC Docket No. 10-90; WC Docket No. 18-155, at 2 (Feb. 5, 2019).
[2] *See Id.*

HD Tandem therefore described its efforts to participate in a commercial marketplace since the 2011 *Transformation Order*. Specifically, HD Tandem currently has commercial agreements in place with fifty-four (54) carriers sending traffic and fourteen (14) LECs receiving traffic.[3] Currently, more than eighty percent of all voice traffic from the 54 carriers to the 14 LECs is routed through HD Tandem's commercial agreements. These commercial agreements provide originating carriers with multiple options for convenient interconnection points chosen by the contracting carrier to reach all of the terminating LECs with whom HD Tandem has an agreement in place.

We further discussed how each of these agreements that HD Tandem has in place with the fifty-four carriers are negotiated on a case-by-case basis with multiple points of negotiation, including: the point of interconnect; the type of protocol (legacy time-division multiplexing ("TDM") format, Internet Protocol ("IP"), or specialty compression decompression ("CoDec")); aggregation of multiple destinations; and whether or not there will be a mutual exchange of traffic between the two negotiating parties. The sum of these factors, which are unique in every negotiation, is the value that HD Tandem provides to the carriers with whom HD Tandem does business.

In HD Tandem's experience, the commercial marketplace that exists today is a far preferable marketplace than a tariffed one. By way of illustration, HD Tandem discussed the attached chart, in which the blue portions of each column signify traffic subject to commercially negotiated rates based on various factors, as described above. Most importantly, the governing commercial rate is mutually agreed to by both parties before any traffic is exchanged. The gray portions of each column signify traffic that is governed by tariffed, or TDM, rates. We discussed how some of this "gray" tariffed traffic is the result of disputes and settlement, with an end rate that is adjusted to a mutually agreed upon rate, while some of the "gray" tariffed traffic is traffic that is the subject of an ongoing dispute, and withheld by the carrier and non-paid (denoted by the red stripe). In contrast, the "blue" traffic is all-IP, with very few disputes and paid in full.

HD Tandem explained its belief that the current record does not accurately portray the reality of the existing commercial marketplace. Specifically, many commenters describe a marketplace where the majority of the traffic is subject to high rates. In contrast, in HD Tandem's experience, the majority of the traffic it handles is IP traffic that is subject to commercial negotiations and is not plagued by legal or regulatory disputes. As a result, HD Tandem expressed its concerns about the potential unintended consequences of various proposed intercarrier compensation reforms, including a potential return of traffic that is currently governed by commercial

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[3] HD Tandem's 14 LEC footprint includes the largest volume LECs in Iowa and South Dakota and accounts for an estimated 1 billion minutes per month. These LECs include: Northern Valley (SD), Goldfield (IA), Breda Glidden (IA), Breda Western Iowa (IA), Louisa Muscatine (IA), Louisa Wapello (IA), I35 (IA), OmniTel (IA), Great Lakes Communications (IA), Premier (IA), Native American Crow Creek (SD), Native American Pine Ridge (SD), Reasnor Greenway (IA), and Killduff Greenway (IA).

agreements to tariffed routes, thereby eroding the nascent commercial marketplace that exists today. Furthermore, HD Tandem expressed concerns about its ability to sustain existing commercial agreements and enter into new commercial agreements, if any proposed solution includes the shifting of costs onto a select subset of carriers in a non-reciprocal manner. HD Tandem also described other potential unintended results, including a possible boon in new arbitrage schemes and a possible exponential rise in robocalling schemes to terminating LECs.

Finally, HD Tandem reiterated its ongoing desire to work with the Commission to address the true problems in the current intercarrier compensation system while at the same time protecting the existing commercial marketplace and the ongoing technological shift to an IP-based world. We discussed other targeted solutions that would eliminate inefficient geographic distinctions, including mileage caps, and urged the Commission to avoid any solutions that shift costs to a select group of carriers without ensuring reciprocal regulatory treatment for all. HD Tandem explained its belief that only a truly reciprocal intercarrier compensation framework will end arbitrage once and for all and continue the advancement of the IP Transition, for the benefit of all consumers.

Respectfully submitted,

/s/ David Erickson

David Erickson
President

cc: Irina Asoskov
Susan Bahr
Allison Baker
Octavian Carare
Randy Clark
Lynne Engledow
William Holloway
John Hunter
Richard Kwiatkowski
Al Lewis
Travis Litman
Nirali Patel
Eric Ralph
Erik Raven-Hansen
Arielle Roth
Gil Strobel
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